(Reserved)

IN THE HIGH COURT OF UTTARANCHAL
AT NAINITAL

Writ Petition No. 1076 (MB) 2004)

Pankaj Sharma -- Petitioner

Versus

Bar Council of Uttaranchal & another -- Respondents

Sri L.P. Nethani, learned Sr. Counsel assisted by Sri. Amit Bhatt, Advocate for the Petitioner.

Sri S.Pundir, Sri M.M. Lamba, Sri M.C. Pant, Sri Gopal Narain, Sri B.B. Sharma, Sri M.S. Pal, Advocates and Sri Alok Singh, learned Sr. Counsel for the Respondents

Hon'ble Rajesh Tandon, J.
Hon'ble B.C. Kandpal, J.

Delivered by Hon'ble Rajesh Tandon, J.

Heard Sri L.P. Nathani, learned Senior Advocate assisted by Sri Amit Bhatt on behalf of the petitioner and Sri Alok Singh, Senior Counsel assisted by Sri Gopal Narain on behalf of respondent no. 1and Sri M.S. Pal on behalf of the respondent no. 2.

By the present writ petition, the petitioner has prayed for quashing the resolution no. 6 passed by the Bar Council of Uttaranchal in its meeting on 23rd October, 2004 at Haridwar contained in annexure 4 to the writ petition.

Briefly stated, according to the case of the petitioner after being enrolled as an Advocate of the Bar Counsel of UP being enrollment no. UP 03117 of 1992 he is practicing as Advocate at District Court at Pithoragarh. After the creation of the State of Uttaranchal, he has submitted an application for transferring his name to State of Uttaranchal. His name was transferred and entered in the voter list, 2004 which was prepared by the Bar Counsel of UP for the purpose of the election of the members of the Bar Counsel of Uttaranchal.

The election of the members of the Bar Council of Uttaranchal was held in the month of May, 2004 where 20 members were elected. The Bar Councils are being constituted under the Advocates Act, 1961 known as the State Bar Councils. Section 3(a) provides that there shall be Bar Council for each State where the Uttar Pradesh was also

included and was known as the Bar Council of the States. Section 3 (a)is quoted below:-

"for each of States of Andhra Pradesh, Bihar, Gujarat, [Jammu and Kashmir], Madhya Pradesh, [Karnataka], Orisa, Rajasthan and Uttar Pradesh, to be known as the Bar Council of that States."

Bar Council of Uttaranchal was created under the U.P. Reorganisation Act 200 by virtue of Section 24 of the Reorganisation Act. It reads as under:-

Special provision relating to Bar Council and advocates *– (1) On and from the appointment day, in the Advocates Act, 1961, in Section 3, in sub-section 91), in clause 9a), for the words "and Uttar Pradesh", the words "Uttar Pradesh and Uttaranchal" shall be substituted.*

Section 6 provides the function of the State Bar Council which reads as under:-

(a) to permit persons as advocate on it roll;

(b) to prepare and maintain such roll;

(c) to entertain and determine cases of misconduct against advocates on its roll;

(d) to safeguard the rights, privileges and interests of advocates on its roll;

[(dd) to promote the growth of Bar Associations for the purposes of effective implementation of the welfare schemes referred to in clause (a) of sub-section (2) of this section (a) of sub-section (2) of section 7;]

(e) to promote and support law reform;

[(ee) to conduct seminars and organize talks on legal topics by eminent jurists and publish journals and paper of legal interest;

[(eee) to organize legal aid to the poor in the prescribed manner;]

(f) to manage and invest the funds of the Bar Council;

(g) to provide for the election of its members;

[(gg) to visit and inspect Universities in accordance with the directions given under clause (i) of sub-section (a) of section 7;]

(h) to perform all other functions conferred on it by or under this Act;

(i) to do all other things necessary for discharging the aforesaid functions.

[(2) A state Bar Council may constitute one or more funds in the prescribed manner for the purpose of-

(a) giving financial assistance to organize welfare schemes for the indigent, disabled or other advocates;

(b) giving legal aid or advice in accordance with the rules made in this behalf;]

[(c) establishing law libraries.]

(3) A State Bar Council may receive any grants, donations, gifts or benefactions for all or any of the purposes specified in sub-section (2) which shall be credited to the appropriate fund or funds constituted under that sub-section.

Section 4 of the Advocates Act of 1961 provides the formation of the Bar Council of India. Section 4 reads as under:-

Bar Council of India. *– (1) There shall be a Bar Council for the territories to which this Act extends to be know as the Bar Council of India which shall consist of the following members, namely:-*

(a) the Attorney-General of India, ex officio;

(b) the Solicitor-General of India, ex officio;

(c) one member elected by each State Bar Council from amongst its members.

Section 7 (c) provides that the Bar Council of India shall lay down the procedure to be followed in its disciplinary committee and the disciplinary committee of each State Bar Council. It reads as under:-

To lay down the procedure to be followed by its disciplinary committee and the disciplinary committee of each State Bar Council;

Clause (g) contains a general function with regard to supervision and control over State Bar Councils of the State. Section 7 (g) reads as under:-

to exercise general supervision and control over State Bar Council.

Section 7 (h) further contains a supervision and control of the Bar Council of India on the State Bar Councils with regard to the legal education as well as standard of such education in consultation with the

Universities in India as well as imparting such education. Clause (h) is quoted below:-

to *promote legal education and to lay down standards of such education in consultation with the Universities in India imparting such education and the State Bar Councils;*

Section 18 deals with the transfer of name from one State roll to another. It reads as under:-

> ***Transfer of name from one State roll to another. – (1)*** *Notwithstanding anything contained in section 17, any person whose name is entered as an advocate on the roll of any State Bar Council may make an application in the prescribed form to the Bar Council of India for the transfer of his name from the roll of that State Bar Council to the roll of any other State Bar Council and, on receipt of any such application the Bar Council of India shall direct that the name of such person shall without the payment of any fee, be removed from the roll of the first mentioned State Bar Council and entered in the roll of the other State Bar Council and the State Bar Councils concerned shall comply with such direction:*
>
> *[Provide that where any such application for transfer is made by a person against whom any disciplinary proceeding is pending or where for any other reason it appears to the Bar Council of India that the application for transfer has not been made bona fide and that the transfer should not be made, the Bar Council of India may, after giving the person making the application an opportunity of making a representation in this behalf, reject the application.]*
>
> *(2) For the removal of doubts it is hereby declared that where on an application made by an advocate under sub-section (1), his name is transferred from the roll of one State Bar*

Council to that of another, he shall retain the same seniority in the latter roll to which he was entitled in the former roll.

Petitioner, has been transferred to the State of Uttaranchal and his name having been entered in the voter list of 2004 for the purpose of the election of the members of the Bar Council of Uttaranchal. In view of the aforesaid fact, we find no merit in the arguments of the counsel of the respondents that the petitioner has no locus standi and the petition is not maintainable.

Petitioner has submitted that the resolution of the respondents dated 23.10.2004 for the formation of head quarter at Dehradun in wholly without jurisdiction. The resolution dated 23.10.2004 reads as under:-

> ***बार कौंसिल के हैड क्वार्टर पर विचारः–*** *बार कौंसिल के हैड क्वार्टर के लिये विस्तृत चर्चा हुई उपस्थित 15 सदस्यों में से 12 सदस्यों ने कहा कि हैड क्वार्टर देहरादून में हो श्री गोपाल सिंह मेंहरा ने कहा कि हैड क्वार्टर नैनीताल में ही होना चाहिये श्री सुभाष त्यागी ने कहा कि हरिद्वार में होना चाहिए। अन्त में बहुमत से हैड क्वार्टर देहरादून बनाने का प्रस्ताव पास किया गया इस समब्ध में कार्यालय के लिए स्थान हेतु सचिव प्रयास करेंगे। षिविर कार्यालय नैनीताल में रखे जाने का प्रस्ताव पारित किया गया। जब तक देहरादून में कार्यायल की व्यवस्था नहीं होती है तब तक कर्यालय पूर्व की तरह नैनीताल में ही चलता रहेगा। इस संदर्भ में प्रस्ताव की एक प्रति बार कौंसिल आफ इण्डिया को सूचनार्थ भेजी जायेगी।*

Before passing the aforesaid resolution dated 23rd October, 2004, the respondents have passed a resolution on 18th September, 2004 where the Bar Council of Uttaranchal has taken a decision that the matter with regard to the head quarter shall be referred to the Bar Council of India by the Chairman. The resolution dated 18th September, 2004 is quoted below:-

> ***बार काउन्सिल के हैड क्वार्टर के बिन्दु पर विचारः–*** *इस बिन्दु पर विचार करने से पूर्व अध्यक्ष महोदय द्वारा हैड क्वार्टर के स्थान के लिए हाउस के निर्णय के आधार पर ही निर्धारित होने का मत व्यक्त करते हुए अध्यक्ष महोदय की ओर से बार काउंसिल ऑफ इण्डिया को लिखे पत्र एवं बार काउंसिल ऑफ इण्डिया से प्राप्त पत्र को हाउस में पढा गया और तदुपरांत सर्व सम्मति से निर्णय लिया गया है कि हैड क्वार्टर के सम्बन्ध में विचार अगली बैठक में किया जायेगा।*

Petitioner has pointed out the letter received from the Bar Council of India on 14th September, 2004 where the Secretary Bar Council of India on a letter sent by the respondents has replied to the Secretary Bar Council of Uttar Pradesh as well as to the Bar Council of Uttaranchal that the head quarter of the Bar Council of Uttaranchal shall be at Nainital which is the seat of the High Court. The reply letter is quoted below:-

S. RADHAKRISHAN
Secretary

BC1 :D:3539:2004 14-9-2004

Shri Dharamveer Sharma,
Advocate,
Chairman,
Bar Council of Uttaranchal,
Nainital

Shri D.K. Sharma,
Advocate,
Member, Bar Council of India
Deena Lodge, Mallital
Nainital,
Uttaranchal

Sir,

The Bar Council of India at its meeting held on 4th/5th September 2004 considered the letter dated 3-9-204 received from Shri Dharamveer Sharma, Chairman, Bar Council of Uttaranchal relating to the seat of the Bar Council of Uttaranchal and also about the funds to meet the expenses of day today affairs of Bar Council of Uttaranchal. After in depth discussion/consideration, the Bar Council of India resolved as follows:-

RESOLUTION

On bifurcation of the State Bar Council of Uttar Pradesh and on Constitution of the State Bar Council of Uttaranchal. Bar Council of Uttaranchal has requested for share of its assets and funds to meet the expenses of day today affairs of the Bar Council of Uttaranchal. It is resolved to request the State Bar Council of Uttar Pradesh to immediately release an amount of Rs. 15 lakh at the initial stage to the

State Bar Council of Uttaranchal to carry on its statutory functions and further resolved that the sharing of assets, capital and liability be completed as early as possible.

Council considered the letter dated 3rd September 2004 received from the Chairman, Bar Council of Uttaranchal and it is decided to inform him that the Headquarter of the Bar Council of Uttaranchal shall be at Nainital which is the seat of the High Court.

This is for your information

Yours faithfully,

(S. RADHAKRISHNAN)
SECRETARY

Copy to :
The Secretary,
Bar Council of Uttar Pradesh,
19, Maharashi Dayanand Mard,
Allahabad
With a request to take necessary steps in terms of the above
Resolution reg:release of funds.

As will appear from the aforesaid, that there was a letter dated 3rd September, 2004 sent by the Chairman Bar Council of Uttaranchal where it was specifically indicated that the headquarter of the Bar Council of Uttaranchal shall be at Nainital which is the seat of the High Court. In view of the aforesaid communication, there was no need to pass a fresh resolution for changing the headquarter from Nainital to Dehradun. Both the resolutions dated 18th September, 2004 (Resolution no. 6 for considering the change of the headquarter as well as resolution dated 23rd October, 2004) (resolution no. 6 for formation of the headquarter at Dehradun) are completely without jurisdiction.

A judicial notice can be taken that the headquarters of the Bar Council remains at the place where the seat of the High Court exists. For example U.P. is having the office of the Bar Councial at Allahabad, Madras at Chennai etc.

Uttar Pradesh Reoganisation act, 2000 provides that the formation of the High Court of Uttaranchal sub-clause 2 provides that the principal seat of the High Court of Uttaranchal shall be at such

place as the President may be notify order appoint. Section 26 of the Uttar Pradesh Reorganisation Act is quoted below:-

> ***High Court of Uttaranchal. – (1)*** *As from the appointed day, there shall be a separate High Court for the State of Uttaranchal (hereinafter referred to as "the High Court of Uttaranchal") and the High Court of Judicature at Allahabad shall become the High Court for the State of Uttar Pradesh (hereinafter referred to as the High Court at Allahabad).*
>
> ***(2)*** *The Principal seat of the High Court of Uttaranchal shall be at such place as the President may, by notified order, appoint.*
>
> *(3) Notwithstanding anything contained in sub-section (2), the Judges and division courts of the High Court of Uttaranchal may sit at such other place or places in the State of Uttaranchal other than its principal seat as the Chief Justice may, with the approval of the Governor or Uttaranchal, appoint.*

Section 7 of the Advocates Act provides that Bar Council of India has full control over the State Bar Councils.

The word 'control' has been defined under the Law Lexicon page 410 as under:-

> ***Control.*** *As a noun, power to check or restrain; superintendence; management. As a verb, to restrain; to check; regulate; to govern; to keep under check; to hold in restraint; to dominate; to rule and direct; to counteract; to exercise a directing, restraining or governing influence over; to govern with reference thereto; to subject to authority; to have under command, and authority over, to have authority over the particular matter.*

As will appear from the aforesaid definition the term 'control' is of a very wide connotation and amplitude and includes a large authority of powers which are incidental or consequential to achieve the powers vested in the authority concerned.

Petitioner has referred Article 235 of the Constitution of India where the world 'control' concerning subordinate courts has been defined. It reads as under:-

Art. 235. *The control over district courts and courts subordinate thereto including the posting and promotion of, and State and holding any post inferior to the post of district judge shall be vested in the High Court, but nothing in this article shall be construed as taking away from any such person any right of appeal which he may have under the law regulating the conditions of his service or as authorizing the High Court to deal with him otherwise than in accordance with the conditions of his service prescribed under such law.*

In view of the above proposition of law, the resolution passed by the State Bar Council from time to time for changing the headquarter either on 18th September, 2004 or 23rd October, 2004 have been passed inspite of the fact there has already been a concurrence of the Bar Council of India for the headquarter of the Bar Council of the State t Nainital which is the seat of the High Court.

Further once there was a resolution of the State Bar Council that the matter shall be referred to the Bar Council of India by the Chairman, there was no occasion to pass a separate resolution. We find that the resolution was contradictory to their own statement dated 3rd September, 2004. The resolution of the respondents dated 18th September, 2004 as well as 23rd October, 2004 are wholly without jurisdiction and these being no legal semblance, the same deserve to be quashed.

In view of the observation made above, we find merit in the writ petition and the same is allowed.

Accordingly, a writ of certiorari is issued quashing the resolution dated 23rd October, 2004.

Consequently, the writ petition is allowed.

The headquarter of the Bar Council of Uttarakhand shall continue to remain at Nainital which is the place of the seat of the High Court.

(B.C. Kandpal, J) **(Rajesh Tandon, J)**

Date : 04.11.2004
Shiv